

AMENDED IN ASSEMBLY JUNE 20, 2006
AMENDED IN ASSEMBLY JUNE 8, 2006
AMENDED IN ASSEMBLY MARCH 13, 2006
AMENDED IN ASSEMBLY JUNE 14, 2005
AMENDED IN ASSEMBLY JUNE 6, 2005
AMENDED IN SENATE MAY 2, 2005
AMENDED IN SENATE APRIL 21, 2005

SENATE BILL

No. 440

Introduced by Senator Speier

February 17, 2005

An act to amend Section 2980 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier. Telecommunications: billing.

Existing law authorizes the Public Utilities Commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation, and to require telephone corporations to provide certain customer services.

Existing law specifically requires a person, corporation, or billing agent to provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. Existing law establishes a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is

not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. Existing law requires the commission to require telephone corporations to provide customer service to telecommunication customers that includes, among other things, information concerning the regulatory process and how customers can participate in that process, including the process of resolving complaints.

~~This bill would establish specified ways for authorize a subscriber to establish that a dialed call was not authorized present a person, corporation, or billing agent that has charged the subscriber for a direct dialed telecommunications service with evidence to rebut that prima facie evidence of authorization.~~ The bill would prohibit a billing telephone company, while a complaint investigation is pending, from requiring the subscriber to pay the disputed charge or any associated late charges or penalties, sending the disputed charge to collection, or making an adverse credit report based on nonpayment of the disputed charge. The bill would require a person, telephone corporation, or billing agent that provides a bill for telecommunications services to include with each bill a statement of the subscriber's rights if billed for unauthorized charges, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2890 of the Public Utilities Code is
2 amended to read:
3 2890. (a) A telephone bill may only contain charges for
4 products or services, the purchase of which the subscriber has
5 authorized.
6 (b) When a person or corporation obtains a written order for a
7 product or service, the written order shall be a separate document
8 from any solicitation material. The sole purpose of the document
9 is to explain the nature and extent of the transaction. Written
10 orders and written solicitation materials shall be unambiguous,
11 legible, and in a minimum 10-point type. Written or oral
12 solicitation materials used to obtain an order for a product or
13 service shall be in the same language as the written order.

1 Written orders shall not be used as entry forms for sweepstakes,
2 contests, or any other program that offers prizes or gifts.

3 (c) The commission may only permit a subscriber's local
4 telephone service to be disconnected for nonpayment of charges
5 relating to the subscriber's basic local exchange telephone
6 service, long-distance telephone service within a local access and
7 transport area (intraLATA), long-distance telephone service
8 between local access and transport areas (interLATA), and
9 international telephone service.

10 (d) (1) A billing telephone company shall clearly identify, and
11 use a separate billing section for, each person, corporation, or
12 billing agent that generates a charge on a subscriber's telephone
13 bill. A billing telephone company shall not bill for a person,
14 corporation, or billing agent, unless that person, corporation or
15 billing agent complies with paragraph (2).

16 (2) Any person, corporation, or billing agent that charges
17 subscribers for products or services on a telephone bill shall do
18 all of the following:

19 (A) Include, or cause to be included, in the telephone bill the
20 amount being charged for each product or service, including any
21 taxes or surcharges, and a clear and concise description of the
22 service, product, or other offering for which a charge has been
23 imposed.

24 (B) Include, or cause to be included, for each entity that
25 charges for a product or service, information with regard to how
26 to resolve any dispute about that charge, including the name of
27 the party responsible for generating the charge and a toll-free
28 telephone number or other no cost means of contacting the entity
29 responsible for resolving disputes regarding the charge and a
30 description of the manner in which a dispute regarding the charge
31 may be addressed. Each telephone bill shall include the
32 appropriate telephone number of the commission that a
33 subscriber may use to register a complaint.

34 (C) Establish, maintain, and staff a toll-free telephone number
35 to respond to questions or disputes about its charges and to
36 provide the appropriate addresses to which written questions or
37 complaints may be sent. The person, corporation, or billing agent
38 that generates a charge may also contract with a third party,
39 including, but not limited to, the billing telephone corporation, to

1 provide that service on behalf of the person, corporation, or
2 billing agent.

3 (D) ~~(i)~~ Provide a means for expeditiously resolving subscriber
4 disputes over charges for a product or service, the purchase of
5 which was not authorized by the subscriber.

6 (e) (1) In the case of a dispute, there is a rebuttable
7 presumption that an unverified charge for a product or service
8 was not authorized by the subscriber and that the subscriber is
9 not responsible for that charge.

10 (2) With regard to direct dialed telecommunications services,
11 evidence that a call was dialed is prima facie evidence of
12 authorization. ~~A subscriber may establish that a dialed call was~~
13 ~~not authorized with any of the following:~~

14 ~~(A) A record of lack of affirmative user authorization.~~

15 ~~(B) A lack of a demonstrated pattern of knowledgeable past~~
16 ~~use.~~

17 ~~(C) Other persuasive evidence of lack of authorization.~~
18 ~~authorization.~~

19 *(f) Notwithstanding paragraph (2) of subdivision (e), a*
20 *subscriber may present a person, corporation, or billing agent*
21 *that has charged the subscriber for a direct dialed*
22 *telecommunications service with evidence to rebut the prima*
23 *facie evidence that the direct dialed telecommunications service*
24 *was authorized, including, but not limited to, evidence that a call*
25 *was dialed using a lost or stolen telecommunications device.*

26 ~~(3)~~

27 (g) While a complaint investigation is pending, the billing
28 telephone company shall not do any of the following:

29 ~~(A)~~

30 (1) Require the subscriber to pay the disputed charge or any
31 associated late charges or penalties.

32 ~~(B)~~

33 (2) Send the disputed charge to collection.

34 ~~(C)~~

35 (3) Make an adverse credit report based on nonpayment of the
36 disputed charge.

37 ~~(F)~~

38 (h) If recurring charges arise from the use of those
39 subscriber-initiated services, the recurring charges are subject to
40 this section.

(g)

(i) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

~~(h) A~~

(j) *Notwithstanding any other provision of law, a person, corporation, or billing agent that provides a bill for telecommunications services shall provide with each bill a clear and conspicuous statement of a subscriber's rights if billed for unauthorized charges, ~~conforming to~~ including substantially the following statement:*

~~"SUMMARY OF YOUR BILLING ERROR RIGHTS IN CASE OF ERRORS (UNAUTHORIZED CHARGES) OR QUESTIONS ABOUT YOUR BILL~~

~~If you think any charge on your bill is wrong, or if you need more information about a transaction on your bill, call us at [toll free number] [the toll free number shown on your bill] or write us [on a separate sheet] as soon as possible at:~~

~~[address] [the address shown on your bill.]~~

~~In your telephone call or letter, give us all of the following information:~~

~~(1) Your name and account number.~~

~~(2) The dollar amount of the suspected error.~~

~~(3) A description of the error. Explain, if you can, why you believe there is an error.~~

~~(4) If you need more information, describe the item you are unsure about.~~

~~You do not have to pay the amount in question or any penalties or late charges connected to that amount while an investigation is pending, but you are still obligated to pay the parts of your bill that are not in question.~~

~~While an investigation is pending, we cannot make a negative credit report based on nonpayment of the disputed charge or take any action to collect the amount you question.~~

~~We will advise you of the results of our investigation within 30 days of the date on which the complaint is received.~~

~~If you call us, and we are unable to resolve your question, it is advisable to follow up by writing to us and keeping a copy of that correspondence.~~

~~If you are dissatisfied with our response, you may also file a complaint with the Public Utilities Commission by calling or writing to the Public Utilities Commission at:~~

~~{name, address, and telephone number of the Public Utilities Commission}[the address and number shown on your bill.]~~

~~You may also file a complaint with the Federal Communications Commission by writing the Federal Communications Commission at:~~

~~{name and address}~~

~~You may have other legal rights in addition to the rights explained here.”~~

“California Customers: Summary of Your Rights in Case of Errors (Unauthorized Charges) on Your Bill.

If you think that any charge on your bill is wrong, contact us at [insert toll-free telephone number or other no-cost means of contact, except that e-mail or another electronic means of contact shall not be the sole means of contact].

You do not have to pay the disputed charge or any associated late charges or penalties while an investigation into the disputed charge is pending, but you are still obligated to pay the parts of your bill that are not in question. While an investigation is pending, we cannot make a negative credit report based on nonpayment of the disputed charge or take any action to collect the disputed charge. We will advise you of the results of our investigation within 30 days of the date on which the complaint is received. You may have other legal rights in addition to the rights explained here.”

(i)

(k) As used in this section:

(1) “Billing agent” means the clearinghouse or billing aggregator.

(2) “Unauthorized charges” include charges incurred using a lost or stolen telecommunications device.